United Nations CED/C/BIH/Q/1

International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

# List of issues in relation to the report submitted by Bosnia and Herzegovina under article 29 (1) of the Convention*

## I. General information

1. Please provide information on the status of the Convention and of other international human rights treaties vis-à-vis domestic law, including the Constitution, and indicate whether the provisions of the Convention can be directly invoked and applied by the courts or other relevant authorities. Please indicate what would happen if the provisions of the Convention were not in accordance with the legislation of Bosnia and Herzegovina, or with other legislation at the entity level. Please provide examples of case law, if any, in which the provisions of the Convention or other international human rights treaties have been invoked before or applied by courts or other relevant authorities.

2. Please, clarify whether the criminal legislation of Bosnia and Herzegovina takes precedence over criminal laws at entity and district levels. Please provide information on progress made towards harmonizing criminal legislation at the entity and district levels. Please provide information about the jurisdictional relationship between the Court of Bosnia and Herzegovina and the courts of the entities and of Brcko District with regard to criminal law and criminal procedure law.

## II. Definition and criminalization of enforced disappearance (arts. 1-7)

3. In relation to paragraph 9 of the State party's report (CED/C/BIH/1), please provide information on the legal and administrative measures that guarantee the non-derogability of the prohibition of enforced disappearance so as to ensure that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as justification for enforced disappearance. Please provide detailed information on the limits prescribed by the Constitution within which guaranteed human rights and freedoms can be restricted, under which specific circumstances and for how long. Please provide details of any legislation or practices concerning terrorism, emergency situations, national security or other grounds that the State

* Adopted by the Committee at it tenth session (7-18 March 2016).



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party may have adopted that would have an impact on the effective implementation of this prohibition (arts. 1 and 16).

4. Please provide information on the amendments to the Criminal Code of Bosnia and Herzegovina that were adopted in May 2015, which introduce the separate autonomous crime of enforced disappearance. Please indicate in particular if a person, not necessarily acting in the capacity of an official, but still acting upon the authorization, support or acquiescence of a State official, would fall within the scope of the definition of the crime of "forced disappearance" currently in effect. Please indicate in particular whether the definition of the crime of "forced disappearance" is in line with article 2 of the Convention and whether it provides for the penalties and aggravating or mitigating circumstances prescribed in the Convention. Please clarify whether this provision is applicable at the State, entity and district levels and whether the criminal codes at the entity or district levels will have to be amended following the codification of enforced disappearance at the State level (arts. 2, 4 and 7).

5. Please indicate whether the courts in the State party interpret the definition of enforced disappearance as a crime against humanity under article 172 of the Criminal Code of Bosnia and Herzegovina, in line with the definition contained in the Convention and the recommendation of the Working Group on Enforced or Involuntary Disappearances (see A/HRC/16/48/Add.1, para. 54). Please also indicate whether the State party envisages amending its legislation in order to bring the definition of enforced disappearance into line with the Convention. Please confirm whether, in the absence of a definition of crimes against humanity at the entity and district levels, the Criminal Code of Bosnia and Herzegovina takes precedence (art. 4).

6. Please describe the laws at the State, entity and district levels that would apply when the following acts do not constitute a crime against humanity: (a) the acts specified in article 6 (1) (a) of the Convention, namely, ordering, soliciting or inducing the commission of, attempting to commit, being an accomplice to or participating in an enforced disappearance, or committing any other similar act; and (b) the responsibility of a superior as set out in article 6 (1) (b) of the Convention. Taking into consideration the information provided in paragraphs 36 to 39 of the State party's report with regard to individual criminal responsibility for enforced disappearance as a crime against humanity, please provide examples, if any, of relevant case law (arts. 6 and 23).

7. In relation to paragraphs 219 to 241 of the State party's report, please provide updated information on the number of missing persons in the State party and, of those, the number of persons presumed to have been subjected to enforced disappearance. Describe the methodology used to arrive at that figure. Please also provide updated information on the process to verify data entered in the Central Record of Missing Persons and indicate when it is expected to be completed (arts. 1 and 24).

8. In relation to paragraphs 25 and 42 to 44 of the State party report, please provide information on the number of cases that have involved enforced disappearance as a crime against humanity and details about the penalties or sanctions imposed, including the length of the sentence, aggravating and mitigating circumstances considered and the number of acquittals. Please also indicate the number of cases of enforced disappearances that have been tried by the War Crimes Chamber, the number of prosecutions conducted and the sentences handed down, and the number of cases pending or transferred to other national courts. In view of the fact that enforced disappearance as a crime against humanity has not been codified at the entity and district levels, please clarify whether the Criminal Code of Bosnia and Herzegovina is applied when war crimes cases are transferred to judicial institutions of the entities and Brcko District. Please provide information on the number of proceedings reopened, new trials ordered and decisions taken following the judgment handed down by the European Court of Human Rights in the case of *Maktouf and*

*Damjanović v. Bosnia and Herzegovina*. Please clarify whether the seriousness of the crime is taken into consideration in each individual case when deciding whether to apply the Criminal Code of the Socialist Federal Republic of Yugoslavia or the Criminal Code of Bosnia and Herzegovina . Please also clarify how the sentences based on the 1976 Criminal Code of the Socialist Federal Republic of Yugoslavia handed down in cases involving the most serious crimes are compatible with the State party's obligation to punish acts of enforced disappearance by appropriate penalties that take into account the extreme seriousness of the crime (art. 7).

9. Please indicate whether article 118, paragraph 2, of the Criminal Code of Bosnia and Herzegovina has been amended to remove the possibility of granting amnesty for serious international crimes, as recommended by the Working Group on Enforced or Involuntary Disappearances (see A/HRC/16/48/Add.1, para. 87 (c)). Please also provide information on the legislative proposal to amend article 3 of the Law on Pardon of Bosnia and Herzegovina that would provide for the possibility of granting pardon to persons accused of genocide, crimes against humanity and other war crimes after they had served three-fifths of their sentence. Please provide information on the number of immunities granted in the context of plea agreements, the charges that were brought against the perpetrators and details on the procedures in place to check the information provided by accused persons (art. 7).

## III. Judicial procedure and cooperation in criminal matters (arts. 8-15)

10. Please indicate whether criminal legislation at the State, entity and district levels contemplates the concept of the continuous nature of crimes and, if so, whether: (a) article 190a of the Criminal Code of Bosnia and Herzegovina could be applied in cases of enforced disappearance that occurred before the entry into force of this legal provision, but for which the fate or whereabouts of the victims is still unknown at the present time; and (b) the statute of limitations would commence from the moment that the crime ceases. Please clarify whether any statute of limitations applies to criminal, civil and administrative actions brought by victims of enforced disappearance who are seeking a remedy (art. 8).

11. In relation to article 10 (2) of the Convention, please provide information about the existence of legal or other measures to enable a preliminary inquiry or investigation to establish the facts to be immediately carried out, in accordance with article 10 (1) of the Convention (art. 10).

12. Please provide information on the authorities that are competent to investigate cases of enforced disappearance. In particular, please clarify whether the Office of the Prosecutor of Bosnia and Herzegovina has the authority to investigate cases of enforced disappearances that have been committed in the entities and in Brcko District, as both a crime against humanity and an isolated crime, and to prosecute those responsible. With reference to the unresolved cases of enforced disappearances that occurred during the 1992-1995 war, please provide information on the steps taken to expedite the investigation into those cases and clarify the fate of persons who disappeared during the war. Please indicate whether the human and financial resources at the disposal of the Office of the Prosecutor of Bosnia and Herzegovina are considered sufficient for it to carry out all exhumations and identification of mortal remains that fall under its jurisdiction and whether additional forensic pathologists have been appointed, as recommended by the Working Group on Enforced or Involuntary Disappearances (see A/HRC/16/48/Add.1, para. 79 (c)). Please also indicate whether the financial and human resources provided to the Missing Persons Institute are deemed adequate for it to fulfil its mandate (arts. 11, 12 and 24).

13. Please provide updated information about the steps taken and the results achieved to bring to justice the perpetrators of enforced disappearances that have been committed in the past in Bosnia and Herzegovina by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State. Please also provide information on the number of decisions handed down by the Constitutional Court of Bosnia and Herzegovina concerning enforced disappearances that have not yet been implemented and explain the measures taken to ensure that judicial decisions are duly enforced (arts. 11 and 12).

14. Please clarify if the 2014 Law on Witness Protection Programme also applies to witnesses testifying before the entity and district courts. Please provide information on cases of intimidation and threats against victims and witnesses and indicate whether any of these cases referred to investigations of or prosecutions for enforced disappearances. Please also provide information on the measures taken to ensure that victims and witnesses who fear violence, revictimization and intimidation owing to the release of convicted criminals receive effective protection and psychological support. With reference to paragraph 66 of the State party's report, please indicate whether, in addition to the protection of witness, mechanisms exist for the protection of complainants, relatives of the disappeared person, their representatives and other persons participating in the investigation into an enforced disappearance against any kind of ill-treatment, intimidation or sanction. Please also indicate the steps taken to ensure that the relatives of victims of enforced disappearances receive adequate psychological support prior to, during and after the process (art. 12).

15. With reference to paragraph 68 of the State party's report, please indicate whether domestic law provides for the suspension from duties of State officials suspected of committing or being involved in the commission of an enforced disappearance during the investigation. Please also specify whether there are any procedural mechanisms in place to exclude any security or law enforcement force from the investigation into an enforced disappearance when one or more of its officials are accused of committing or being involved in the commission of the offence (art. 12).

16. Please clarify whether the reciprocity requirement in the Law on Mutual Assistance in Criminal Matters could prevent the State party from fully implementing article 10 of the Convention. Please also indicate whether any limitations or conditions set out in national legislation could be applied in relation to requests for judicial assistance or cooperation in the terms set out in articles 14 and 15 of the Convention (arts. 10, 14 and 15).

## IV. Measures to prevent enforced disappearances (arts. 16-23)

17. Please provide information on:

(a) The authority that is competent to determine the expulsion, return, surrender or extradition of persons;

(b) The mechanisms and criteria applied in the framework of these procedures to evaluate and verify the risk that a person may be subjected to enforced disappearance;

(c) Whether it is possible to appeal a decision on expulsion, return, surrender or extradition and, if so, please indicate before which authorities, what are the applicable procedures and whether they have suspensive effect;

(d) Whether legislation and practices concerning terrorism, emergency situations, national security or other grounds that may have been adopted have had any impact on the effective implementation of the prohibition to expel, return, surrender or extradite a person. Please provide information on the procedural safeguards concerning decisions on detention under the Law on Movement and Stay of Aliens and Asylum and indicate, in particular, if a

maximum length of administrative detention has been introduced. Please also provide information on the availability of legal aid and information on remedies for migrant workers to appeal decisions ordering their detention. Please indicate whether individuals whose citizenship has been revoked and who are consequently detained in the deportation centre enjoy the same fundamental safeguards as others and can effectively challenge the decisions to detain and deport them (arts. 16 and 17).

18. Please indicate whether there is any legal provision that specifically prohibits secret detention. Please provide information on the existence of protocols to guarantee the prompt notification of and access to lawyers, doctors and family members that are applied in practice and not only in law from the outset of the deprivation of the liberty and at the moment of release. Please also provide information on whether any conditions and/or restrictions apply to the measures set out in article 17 (2) (d) of the Convention. Please provide more information on the guarantees for any person with a legitimate interest to bring proceedings before a court to determine the lawfulness of a detention, as provided for in article 17 (2) (f) of the Convention. Please also provide information about the existing guarantees to ensure that the Ombudsman has immediate and unrestricted access to all places of deprivation of liberty and indicate whether the Ombudsman's Office has sufficient financial, human and technical resources to enable it to carry out its functions effectively and independently (arts. 17, 18 and 21).

19. In relation to paragraphs 86 and 87 of the State party's report, please provide information on the measures taken to ensure that all records of persons deprived of liberty are properly and immediately compiled and kept up to date. In addition, please indicate whether there have been any complaints concerning the failure by officials to record a deprivation of liberty or any other pertinent information in registers concerning persons deprived of liberty and, if so, please provide information about the proceedings initiated and, if relevant, the sanctions imposed, and on the measures taken to ensure that such omissions are not repeated, including the provision of training for the personnel in question (arts. 17 and 22).

20. Please indicate whether the State party provides specific training on the Convention, as provided for in article 23 thereof, to civil and military law enforcement personnel, medical personnel, public servants and any other persons who may be involved in the custody or treatment of any person deprived of liberty, in particular to members of the police, the judiciary and migrant authorities (arts. 22 and 23).

## V. Measures for reparation and for the protection of children from enforced disappearance (arts. 24-25)

21. With reference to paragraph 139 of the State party's report, please explain how the notion of "injured party" in national law would satisfy the wider definition of victim as any individual who has suffered harm as the direct result of an enforced disappearance, in line with article 24 (1) of the Convention. Please indicate whether the State party envisages incorporating into domestic law a definition of victim that is in accordance with the treaty provision (art. 24).

22. Please provide information on steps taken to ensure that relatives of victims of enforced disappearance are regularly and promptly kept informed about the investigation process, including the exhumation and identification of mortal remains, and the prosecution. In particular, please clarify how the anonymization of court decisions and other documents available to the public is compatible with the State party's obligation under article 18 of the Convention (art. 24).

23. Please provide information on steps taken to adopt a national programme on measures of reparation for relatives of victims of enforced disappearance that includes compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition. Please also provide information on the steps taken to establish the Fund for Support to the Families of Missing Persons that is provided for in the Law on Missing Persons and indicate, in particular, how the State party plans to address the issues that are hindering its creation. Please indicate the measures taken to ensure that, irrespective of any other type of support they may receive, relatives of disappeared persons are entitled to social benefits and other measures of social support, including health care, special education programmes and psychological assistance. Please indicate whether any progress has been made to eliminate discrepancies, based on place of residence, in access to and levels of social benefits and other measures of social support. In that context, please indicate the progress made towards the adoption of a State law on access to social benefits for relatives of disappeared persons. Please clarify if measures have been taken to amend article 27 of the Law on Missing Persons to ensure that there is no automatic declaration of death of persons whose names are entered in the Central Record on Missing Persons. Please also indicate whether the State Party intends to adopt legislation that may provide solutions to family members of the disappeared person in fields such as social welfare, financial matters, family law and property rights. Please indicate if steps have been taken to amend legislation at the entity level that make social allowances conditional on obtaining a declaration of death of victims of enforced disappearance (art. 24).

24. Please provide information on how the wrongful removal of children victims of enforced disappearance is prevented and punished in criminal law. Please provide information on the relevant measures taken to search for and identify children victims of enforced disappearance, including through DNA databases, as per the procedures in place to return them to their families of origin. Please indicate which procedures are in place to guarantee the right of disappeared children to have their true identity re-established (art. 25).

25. Please provide information on the procedures in place to review and, if necessary, annul any adoption or placement of children that originated in an enforced disappearance, including conditions for an adoption to be valid. Please also provide information on whether there is a specific time frame for an adoption to be reviewed and/or annulled and the persons entitled to start a procedure of this nature. If such procedures have not yet been set up, please indicate whether there are any initiatives to bring national legislation into line with article 25 (4) of the Convention (art. 25).